MALAYAN BANKING BHD.

v.

DATUK LIM KHENG KHIM [2]

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMED JC
[BANKRUPTCY NO. 29-513-89]
3 MARCH 1992

BANKRUPTCY: *Judgment debtor applied for stay of further proceedings pending determination of appeal to Supreme Court.*

Judgment debtor applied for a stay of further proceedings pending the determination of his appeal to the Supreme Court. [**These are Additional Grounds of Judgment in reference to the decision as published in (to [1992] 2 CLJ (Rep) 826)**]

Held:
As some serious points of law have been raised in this proceedings which no doubt will be decided by the Supreme Court when the appeal is heard, the Court exercised its discretion to stay further proceedings until the appeal is heard and determined.

[Stay of further proceedings until appeal to Supreme Court heard and determined.]

Cases referred to:
Realisations Industrielles et Commerciales S.A. v. Loescher and Partners [1957] 1 WLR 1026 ***(foll)***
Re Chop Sin Guan Moh & Ors. [1965] 2 MLJ 106 ***(foll)***
Soh Bok Yew v. Cinder Dvpt. Sdn. Bhd. [1977] 1 MLJ 242 ***(cit)***

Legislation referred to:
Bankruptcy Act 1967, s. 97
Bankruptcy Rules 1969, r. 138

For the petitioning creditor - Toh Lee Hong; M/s. Lim Huck Aik & Co.
For the judgment debtor - Ooi Teik Hoe; M/s. Ooi Lee & Co.

JUDGMENT

Abdul Hamid Mohamed JC:

Learned Counsel for the judgment debtor applied for a stay of further proceedings pending the determination of the judgment debtor's appeal to the Supreme Court. Learned Counsel for the petitioning creditor objected to the application.

Section 97 of the Bankruptcy Act 1967, provides:

> The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to conditions as the Court thinks just.

Rule 138 of the Bankruptcy Rules 1969, provides:

> There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally.

There is no doubt the words "at any time" include an application made after a receiving and adjudication order has been made - see *Realisations Industrielles et Commerciales S.A. v. Loescher and Partners* [1957] 1 WLR 1026 and *Re Chop Sin Guan Moh & Ors.* [1965] 2 MLJ 106.

The question therefore is whether there is sufficient reason.

As I have stated in the main grounds of judgment, a receiving and adjudication order was first made in the previous proceedings on 20 June 1988. The application for a stay of proceedings was refused.

However, on 24 April 1989, the appeal by the judgment debtor was allowed by the Supreme Court which means that the judgment debtor was a bankrupt for about 10 months, until his appeal was finally determined in his favour.

In this proceeding, some serious points of law have been raised. I have also expressed my doubts about the correctness of the decision of the Federal Court in *Soh Bok Yew v. Cinder Dvpt. Sdn. Bhd.* [1977] 1 MLJ 242 which is binding on me. All these points will, no doubt, be decided by the Supreme Court when the appeal is heard.

In the circumstances, I am of the view that there are sufficient reasons for me to exercise my discretion to stay further proceedings until the appeal is heard and determined.

Also found at [1992] 3 CLJ 1616